IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 17530 of 2007(J)

PETITIONER:

ANSON ANTONY, CONSIGN AGENCIES,
NP BUILDING, CHITOOR ROAD, ERNAKULAM.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
DEPT. OF COMMERCIAL TAXES,
1ST CIRCLE, ERNAKULAM.

2. THE DEPUTY COMMISSIONER,
DEPT. OF COMMERCIAL TAXES,
ERNAKULAM.

3. THE INSPECTING ASST. COMMISSIONER,
DEPT. OF COMMERCIAL TAXES,
KAKKANADU, KOCHI-30.

BY G.P. SRI.MOHAMMED RAFFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.17530 of 2007

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Dated this the 7th day of June, 2007.

JUDGMENT

Since this court has held that revision against penalty levied under Section 17(5A) of the KGST Act is not maintainable and penalty will vary with the tax demand and since petitioner has filed appeal against revised assessment issued under Section 19(1) of the KGST Act, penalty under Section 17(5A) will also be modified and will be refixed at three times the tax sustained in appeal. Counsel submitted that petitioner has got 50% stay against recovery of revised demand of tax. In the circumstances, W.P. is disposed of granting stay against recovery of two third of penalty due under Section 17(5A) till disposal of appeal against assessment on petitioner remitting one third of penalty within one month from now. The revisional authority will close the revision as not maintainable. The assessing authority will modify the demand of penalty based on tax sustained in appeal. The petitioner can make payment to the Assessing Officer and produce the receipt before the recovery authority and recovery authority will keep the matter pending for further instruction from the officer to pursue recovery, if necessary after appeal is disposed of and only if petitioner fails

to make payment of the balance amount. The petitioner will produce copy of this judgment before the revisional authority for closing the revision.

C.N.RAMACHANDRAN NAIR
Judge

pms